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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,948	06/25/2001	William P. Apps	RPC 0555 PUS	1683

7590 02/25/2003

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary

Application No.

09/891,948

Applicant(s)

APPS, WILLIAM P.

Examiner

Stephen J. Castellano

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: _____

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('279) (Apps) in view of Hammett ('554) (Hammett), McGrath ('844) (McGrath) and Sauey.

Apps discloses the invention except for the internal columns appear to be the same height as the wall structure. Hammett, McGrath and Sauey teach internal columns of shorter height than the wall structure. It would have been obvious to modify the height of the internal columns to be shorter than the wall structure to provide wider access to an upper portion of the bottle located within a pocket so that a user could grasp a larger portion of the bottle's exterior ensuring a firm grasp of the bottle before it is lifted from the tray.

Claims 1-10 and 12-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('793) or Apps et al. ('002) in view of Hammett ('554) (Hammett), McGrath ('844) (McGrath) and Sauey.

The Apps references disclose the invention except for the internal columns appear to be the same height as the wall structure. Hammett, McGrath and Sauey teach internal columns of shorter height than the wall structure. It would have been obvious to modify the height of the internal columns to be shorter than the wall structure to provide wider access to an upper portion of the bottle located within a pocket so that a user could grasp a larger portion of the bottle's exterior ensuring a firm grasp of the bottle before it is lifted from the tray.

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Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Apps et al. ('793), Apps et al. ('002) and Apps et al. ('279) in view of McGrath.

The Apps references disclose the invention except for the interior member having a height less than the height of the wall structure. McGrath teaches an interior member (support surfaces 46) having a height less than the height of the exterior wall structure and a bottle loaded within the crate yet greater than the height of dividing walls (the portions of partition 47 which extends between the support surfaces 46). It would have been obvious to modify the height of the interior member to be less than the height of the wall structure in order to provide wider access to an upper portion of the bottle located within a pocket so that a user could grasp a larger portion of the bottle's exterior ensuring a firm grasp of the bottle before it is lifted from the tray.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGrath.

McGrath discloses a low depth bottle tray having one bottle loaded therein, the tray includes a base, a wall structure, and a partition 47, the partition has first portions with support surfaces 46, each first portion defining an interior member, the partition has second portions between the first portions with each defining a divider wall extending upwardly from the base, the interior members have a height greater than the height of the divider walls but less than the height of the wall structure (as shown in Fig. 25, 27, 29 and 30) and less than the height of the bottle. McGrath discloses the invention except for the plurality of bottles. Loading a plurality of bottles in a bottle crate is well known and the structure of McGrath is specifically adapted to carry eight large bottles. It would have been obvious to add one or more bottles to McGrath's crate in order to transport and store more than one bottle to increase the efficiency of transporting and storing of bottles.

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Applicant's arguments filed December 17, 2002 have been fully considered but they are not persuasive.

The examiner invites the applicant to take a second look at Fig. 25 and the relation of top edge 51 to the height of the wall structure. The wall structure is taller than the top edge 51. Figures 27, 29 and 30 show the same relation of the heights. There were no specific arguments pertaining to motivation or the appropriateness of the combination.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the


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organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
February 14, 2003